

CENTER FOR DISABILITY ACCESS
Raymond Ballister Jr., Esq., SBN 111282
Russell Handy, Esq., SBN 195058
Amanda Seabock, Esq., SBN 289900
Zachary Best, Esq., SBN 166035
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Andres Gomez,
Plaintiff,

v.

DTG Operations, Inc., an
Oklahoma Corporation;
The Hertz Corporation, a
Delaware Corporation;
Defendants.

Case No.

**Complaint for Damages and
Injunctive Relief for Violations
of: American's With Disabilities
Act; Unruh Civil Rights Act**

**NOT RELATING TO A
CONSTRUCTION-RELATED
BARRIER AS DEFINED IN CAL.
CIV. CODE § 55.3**

Plaintiff Andres Gomez ("Plaintiff") complains of DTG Operations, Inc., an Oklahoma Corporation; The Hertz Corporation, a Delaware Corporation; ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a visually-impaired individual and a member of a protected class of persons under the Americans with Disabilities Act. Plaintiff uses JAWS to access the internet and consume website content using his computer, as well as Talkback or similar software to navigate websites and applications on

1 mobile devices. Plaintiff is legally blind¹ and cannot use a computer without
2 assistance of screen-reader software (“SRS”)

3 2. Defendant DTG Operations, Inc., owned or operated Thrifty Car
4 Rentals (“Car Rental”) located throughout California, including in San
5 Francisco County, California, in March 2021.

6 3. Defendant DTG Operations, Inc., owns or operates Car Rental located
7 throughout California, including in San Francisco County, California,
8 currently.

9 4. Defendant The Hertz Corporation, owned or operated Car Rental
10 website, with a root domain of: [https://www.thrifty.com/loc/ll/us/ca/san-](https://www.thrifty.com/loc/ll/us/ca/san-francisco-downtown/364-o-farrell-street/)
11 [francisco-downtown/364-o-farrell-street/](https://www.thrifty.com/loc/ll/us/ca/san-francisco-downtown/364-o-farrell-street/), and all related domains, sub-
12 domains and/or content contained within it, (“Website”) in March 2021.

13 5. Defendant The Hertz Corporation, owns or operates the Car Rental’s
14 Website currently.

15 6. Plaintiff does not know the true names of Defendants, their business
16 capacities, their ownership connection to the property and business, or their
17 relative responsibilities in causing the access violations herein complained of,
18 and alleges a joint venture and common enterprise by all such Defendants.
19 Plaintiff is informed and believes that each of the Defendants herein, is
20 responsible in some capacity for the events herein alleged or is a necessary
21 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
22 the true names, capacities, connections, and responsibilities of the Defendants
23 are ascertained.

24
25
26 ¹ Plaintiff uses the terms “visually-impaired” or “blind” interchangeably to
27 refer to individuals, including himself, who meet the legal definition of
28 blindness. (visual acuity of 20/200 or worse.) Some individuals who meet
these criteria have no vision, others have limited vision.

JURISDICTION & VENUE:

7. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq. (“ADA”)

8. This court has supplemental jurisdiction over Plaintiff’s non-federal claims pursuant to 28 U.S.C. § 1367 because Plaintiff’s Unruh claims are formed from the same case and/or controversy and are related to Plaintiff’s ADA claims. A violation of the ADA is a violation of Unruh. (Cal. Code §51(f).

9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b). Defendant is subject to personal jurisdiction in this District due to its business contacts with the District, and a substantial portion of the complained of conduct occurred in this District.

FACTUAL ALLEGATIONS:

10. Plaintiff is a legally blind person and a member of a protected class under the ADA. Plaintiff is proficient with and uses SRS to access the internet and read internet content on computers and mobile devices.

11. Plaintiff cannot use a computer without the assistance of screen reader software. (“SRS”).

12. Car Rental operates privileges, goods or services out of a physical location in California. These services are open to the public, places of public accommodation, and business establishments.

13. The Website is a nexus between Car Rental’s customers and the terrestrial based privileges, goods or services offered by Car Rental.

14. The Car Rental offers websites and digital booking as some of the facilities, privileges, and advantages offered by Defendants to patrons of the Car Rental in connection with their patronage at the Car Rental.

15. Among the services offered include: details about vehicles and the Car

1 Rental itself, location and contact information, Car Rental policies,
2 information about rates and availability and offers the ability to quickly book
3 a vehicle without any ambiguity as to the amenities that would be available to
4 the patron.

5 16. Plaintiff was a prospective customer who wished to access Defendant's
6 goods and services of the Car Rental.

7 17. Plaintiff visited the Website in March 2021 with the intent to rent a
8 vehicle.

9 18. When Plaintiff attempted to navigate the Website, Plaintiff encountered
10 numerous accessibility design faults that prevented him from navigating the
11 site successfully using SRS. Investigation into his experience revealed barriers,
12 including, but not limited to:

- 13 a. Images on the website lack a text equivalent readable by
14 SRS.
- 15 b. The website contains script elements that are not
16 identified with functional text readable by SRS.
- 17 c. The website contains form elements that are not identified
18 with functional text readable by SRS.
- 19 d. The visualization of the webpage contains impermissibly
20 low contrast enabling differentiation of background and
21 foreground elements.

22 19. These inaccessible elements rendered the ostensibly "accessible"
23 elements inaccessible as a result of difficulty and confusion navigating the
24 numerous inaccessible elements.

25 20. Currently, the defendants either fail to provide an accessible website or
26 Defendants have failed to maintain in working and useable conditions those
27 website features required to provide ready access to persons with disabilities.

28 21. Despite multiple attempts to access the Website using Plaintiff's

1 computer and mobile device, Plaintiff has been denied the full use and
2 enjoyment of the facilities, goods and services offered by Defendants as a
3 result of the accessibility barriers on the Website.

4 22. Plaintiff personally encountered accessibility barriers and has actual
5 knowledge of them.

6 23. By failing to provide an accessible website, the defendants denied
7 Plaintiff full and equal access to the facilities privileges or advantages offered
8 to their customers.

9 24. Plaintiff has been deterred from returning to the Website as a result of
10 these prior experiences.

11 25. The failure to provide accessible facilities created difficulty and
12 discomfort for the Plaintiff.

13 26. If the website had been constructed equally accessible to all individuals,
14 Plaintiff would have been able to navigate the Website and rent a vehicle.

15 27. Additionally, Plaintiff is a tester in this litigation and seeks future
16 compliance with all federal and state laws. Plaintiff will return to the Website
17 to avail himself of its goods and/or services and to determine compliance with
18 the disability access laws once it is represented to him that the Car Rental and
19 Website are accessible.

20 28. Plaintiff is currently deterred from doing so because of Plaintiff's
21 knowledge of the existing barriers and uncertainty about the existence of yet
22 other barriers on the Website. If the barriers are not removed, Plaintiff will
23 face unlawful and discriminatory barriers again.

24 29. The barriers identified above violate easily accessible, well-established
25 industry standard guidelines for making websites accessible to people with
26 visual-impairments that use SRS to access websites. Given the prevalence of
27 websites that have implemented these standards and created accessible
28 websites, it is readily achievable to construct an accessible website without

1 undue burden on the Car Rental or a fundamental alteration of the purpose of
2 the Website.

3 30. Compliance with W3C Web Content Accessibility Guidelines
4 (“WCAG”) 2.0 AA standards is a viable remedy for these deficiencies and a
5 standard that has been adopted by California courts for website accessibility.

6 31. It’s been established that failure to remove these inaccessible conditions
7 violates the ADA and California law and requiring compliance with industry
8 access standards is a remedy available to the plaintiff.

9 32. The Website was intentionally designed, and based on information and
10 belief, it is the Defendants’, policy and practice to deny Plaintiff access to the
11 Website, and as a result, denies the goods and services that are otherwise
12 available to patrons of the Car Rental.

13 33. Due to the failure to construct and operate the website in line with
14 industry standards, Plaintiff has been denied equal access to Defendant’s Car
15 Rental and the various goods, services, privileges, opportunities and benefits
16 offered to the public by the Car Rental.

17 34. Given the nature of the barriers and violations alleged herein, the
18 plaintiff alleges, on information and belief, that there are other violations and
19 barriers on the website, and/or at the Car Rental, that relate to his disability. In
20 addition to the barriers he personally encountered, Plaintiff intends to seek
21 removal of all barriers on the Website that relate to his disability. See *Doran v.*
22 *7-Eleven* (9th Cir. 2008) 524 F.3d 1034 (holding that once a plaintiff
23 encounters one barrier, they can sue to have all barriers that relate to their
24 disability removed regardless of whether they personally encountered the
25 barrier).

26 35. Plaintiff will amend the complaint, to provide further notice regarding
27 the scope of the additional demanded remediation in the event additional
28 barriers are uncovered through discovery. However, please be on notice that

1 the plaintiff seeks to have all barriers related to his disability remedied.

2
3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
4 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
5 Defendants.) (42 U.S.C. section 12101, et seq.)

6 36. Plaintiff re-pleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint. The Car Rental is a public accommodation with the definition of
9 Title III of the ADA, 42 USC § 12181.

10 37. The website provided by the Defendant is a service, privilege or
11 advantage and extension of Car Rental physical presence and terrestrial
12 services.

13 38. When a business provides services such as a website, it must provide an
14 accessible website.

15 39. Here, an accessible website has not been provided. A failure to provide
16 an accessible website is unlawful discrimination against persons with
17 disabilities.

18 40. Under the ADA, it is an act of discrimination to fail to ensure that the
19 privileges, advantages, accommodations, facilities, goods and services of any
20 place of public accommodation is offered on a full and equal basis by anyone
21 who owns, leases, or operates a place of public accommodation. *See*: 42 U.S.C.
22 § 12182(a). Discrimination is defined, inter alia, as follows: “A failure to make
23 reasonable modifications in policies, practices, or procedures, when such
24 modifications are necessary to afford goods, services, facilities, privileges,
25 advantages, or accommodations to individuals with disabilities, unless the
26 accommodation would work a fundamental alteration of those services and
27 facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).”

28 41. Here, the failure to ensure that the accessible facilities were available

1 and ready to be used by the plaintiff is a violation of the law.

2 42. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
3 set forth and incorporated therein, Plaintiff requests relief as set forth below.
4

5 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
6 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
7 Code § 51-53.)

8 43. Plaintiff repleads and incorporates by reference, as if fully set forth
9 again herein, the allegations contained in all prior paragraphs of this
10 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
11 that persons with disabilities are entitled to full and equal accommodations,
12 advantages, facilities, privileges, or services in all business establishment of
13 every kind whatsoever within the jurisdiction of the State of California. Cal.
14 Civ. Code §51(b).

15 44. The Unruh Act provides that a violation of the ADA is a violation of the
16 Unruh Act. *Cal. Civ. Code* § 51(f).

17 45. Defendants’ acts and omissions, as herein alleged, have violated the
18 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
19 rights to full and equal use of the accommodations, advantages, facilities,
20 privileges, or services offered.

21 46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
22 discomfort or embarrassment for the plaintiff, the defendants are also each
23 responsible for statutory damages, i.e., a civil penalty. *Cal. Civ. Code* §
24 55.56(a)-(c).

25 47. Pursuant to 42 U.S.C. § 12188 and the remedies, procedures and rights
26 set forth and incorporated therein, Plaintiff requests relief as set forth below.
27
28

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. A Declaratory Judgment that at the commencement of this action Defendants were in violation of the requirements of the ADA due to Defendants' failures to take action to ensure that its Website was fully accessible to and independently usable by blind and visually-impaired individuals.

2. For equitable nominal damages for violation of civil rights. See *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021) and any other equitable relief the Court finds appropriate.

3. Pursuant to 42 U.S.C § 12181, a preliminary and permanent injunction enjoining Defendants from violating the ADA with respect to its Website.

4. Damages under the Unruh Civil Rights Act § 51², which provides for actual damages and a statutory minimum of \$4,000 for each offense.

5. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and *Cal. Civ. Code* § 52.

Dated: July 22, 2020

CENTER FOR DISABILITY ACCESS



By: _____

Russell Handy, Esq.
Attorney for Plaintiff

² Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.